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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
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13 UNITED LEVAO,

14 Petitioner,

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16 vs.

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19 D.T. LEWIS, Warden,

20 Respondent.
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CASE NO. 10-CV-1040 W (NLS)

ORDER:

**(1) ADOPTING REPORT AND
RECOMMENDATION [DOC. 48]
AND**

**(2) DENYING PETITIONER'S
FIRST AMENDED PETITION
FOR WRIT OF HABEAS CORPUS
[DOC. 16]**

23 On January 7, 2011, United Levao ("Petitioner"), a California prisoner
24 proceeding pro se, filed his first amended petition for writ of habeas corpus under 28
25 U.S.C. § 2254 ("Petition"). [Doc. 16.] Levao is serving an indeterminate sentence of
26 15 years to life for first-degree murder. He contests his confinement, alleging that his
27 due process rights and other constitutional rights under the fourth, fifth, sixth and
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1 fourteenth amendments were violated from the time he was first detained up through
2 his trial and conviction. Respondent filed an answer, and then as directed by the court,
3 an amended answer, arguing that the court should deny the Petition on all grounds.
4 [Docs. 40, 46.] The court granted Levao's 60-day extension request for him to file his
5 traverse. [Doc. 47.] The traverse was due December 14, 2012. As of the date of this
6 order, no traverse has been filed.

7 On January 31, 2013, after a review of the Petition, amended answer, and
8 complete record in the case, United States Magistrate Judge Nita L. Stormes issued a
9 Report and Recommendation ("Report") recommending that this Court deny the
10 Petition. [Doc. 48.] The Report also ordered that any objection was to be filed by
11 February 22, 2013. (*Id.* at 20.) To date, neither party has filed an objection or made
12 a request for additional time to do so.

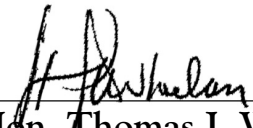
13 A district court's duties concerning a magistrate judge's report and
14 recommendation, and a party's objections thereto, are set forth in Rule 72(b) of the
15 Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). When no objections are
16 filed, the district court is not required to review the magistrate judge's report and
17 recommendation. See *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.
18 2003) (en banc) (holding that 28 U.S.C. § 636(b)(1)(C) "makes it clear that the district
19 judge must review the magistrate judge's findings and recommendations de novo *if*
20 *objection is made*, but not otherwise") (emphasis in original); *Schmidt v. Johnstone*, 263
21 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (concluding that where no objections were filed,
22 the district court had no obligation to review the magistrate judge's report). This rule
23 of law is well-established within the Ninth Circuit and this district. See *Wang v.*
24 *Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005) ("Of course, de novo review of a R
25 & R is *only* required when an objection is made to the R & R.") (emphasis added)
26 (citing *Reyna-Tapia*, 328 F.3d at 1121); *Nelson v. Giurbino*, 395 F. Supp. 2d 946, 949
27 (S.D. Cal. 2005) (Lorenz, J.) (adopting report in its entirety without review because
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1 neither party filed objections to the report despite the opportunity to do so); see also
2 Nichols v. Logan, 355 F. Supp. 2d 1155, 1157 (S.D. Cal. 2004) (Benitez, J.).

3 Accordingly, the Court accepts Magistrate Judge Stormes' recommendation, and
4 **ADOPTS** the Report in its entirety [Doc. 48]. For the reasons stated in the Report,
5 which is incorporated herein by reference, the Court **DENIES** the Petition [Doc. 16].
6 The district court clerk shall close the district court case file.

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8 **IT IS SO ORDERED.**

9 **DATED: April 3, 2013**

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12 Hon. Thomas J. Whelan
13 United States District Judge
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